

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JERRY SAENZ,

Plaintiff,

v.

JANEL NICKEL, *et al.*

Defendants.

ORDER

13-cv-697-bbc

At the February 12, 2014 telephonic preliminary pretrial conference with the pro se plaintiff Jerry Saenz and counsel for the defendants, the court announced that in light of the Court of Appeals recent (unpublished) opinion in *Garner v. Sumnicht*, it was prepared to recruit counsel to assist plaintiff with this lawsuit if he wanted such assistance. Plaintiff reported that he did. Defendants' counsel asked permission to investigate whether plaintiff has exhausted his administrative remedies before the court begins the recruitment process. Saenz responded that he has adequately exhausted his administrative remedies, but he understands that the court is giving the State a chance to check this for itself.

Therefore, if any defendant wishes to seek summary judgment on the basis of a plaintiff's failure to exhaust his *administrative* remedies, then that defendant must file a summary judgment motion raising this issue *alone* not later than **March 28, 2014**. Because this is a narrow issue that can be decided on a narrow set of facts, the parties do not need to follow the court's Procedure On Summary Judgment. Instead, the moving defendant may submit a motion, supporting affidavits, relevant exhibits, and a supporting brief. The defendant need not submit a separate document containing proposed findings of fact, so long as the material facts can be found in the supporting affidavits and exhibits.

Plaintiff must file and serve any response in opposition to such a motion not later than 21 days after receiving a copy of the motion and supporting materials. Plaintiff may file a responsive brief, affidavits and exhibits which must be relevant to and limited to the question whether plaintiff has adequately exhausted his administrative remedies on his claims. The plaintiff need not submit a separate document containing proposed findings of fact, so long as any material facts can be found in the supporting affidavits and exhibits.

The moving defendant(s) may file a reply not later than seven days after receiving plaintiff's response.

In the event the state does not file a motion claiming a failure to exhaust administrative remedies, or if it files such a motion and the court does not grant it, then the court will begin the process of recruiting an attorney to represent plaintiff in this lawsuit.

Entered this 12th day of February, 2014.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge